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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-305-E

IN RE: Request of South Carolina Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920	)	**SCE&G'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND IN THE ALTERNATIVE MOTION TO STRIKE**

ARGUMENT

SCE&G's Motion for Summary Judgment rests on a simple proposition—that ORS bears the burden of proof in demonstrating (1) that it has conducted a preliminary investigation as required by S.C. Code § 58-27-920, and (2) that the rates that it has proposed are "fair and reasonable," which is what is required by the plain language of the statute upon which ORS has based its request for rate reductions in this docket:

> The commission may, **after a preliminary investigation by the Office of Regulatory Staff** and upon such evidence as to the commission seems sufficient, order any electrical utility to put into effect **a schedule of rates as shall be deemed fair and reasonable**, within such time as may be prescribed by order of the commission, which shall be not less than fifteen days, and an attested copy of the order must be served upon the utility and the Office of Regulatory Staff by registered mail or otherwise as provided by law.

S.C. Code § 58-27-920; Request ¶ 9 (emphases added).[1] Further, the longstanding and well-established rules of practice before this Commission require that, "[i]n proceedings involving utilities, the Commission shall require any party and the Office of Regulatory Staff to file copies

[1] As SCE&G noted in its Motion, it is also what is required by the Constitution. *See Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923).

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of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing." 10 S.C. Code Ann. Regs. 103-845(C). In recognition of this, the Hearing Officer in this proceeding ordered that:

> ORS and any Party of Record supporting ORS[2] in Docket No. 2017-305-E must file with the Commission one (1) copy of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before August 14, 2018 (must be post-marked on or before this date).

Order No. 2018-81-H at 4. In addition—and should ORS have any doubt about which party bears the burden of proof in these proceedings—the Hearing Officer stated unequivocally that "[e]ach Applicant or Petitioner *must bear the burden of proof of the issues in its own initiated Docket*." *Id.* at 5 (emphasis added). Thus, there is no question that it was incumbent upon ORS to prefile and serve in this docket the direct testimony of its witnesses setting forth all of the evidence it intended to present in order to meet its burden of proof no later than August 14, 2018.

Falling far short of meeting its evidentiary burden in this case, the testimony that ORS filed on August 14, 2018 does not even attempt to address the fundamental issues of whether ORS actually conducted a preliminary investigation as the statute requires, or whether the rates that it proposes are fair and reasonable. These critical omissions are laid bare by the fact that ORS's Response to SCE&G's Motion makes no attempt at all to argue for the sufficiency of the testimony ORS has offered. Instead, ORS's Response makes passing reference to the "volume of discovery" in this case, but utterly fails to point the Commission to any evidence which supports ORS's claim that the rates it seeks to impose on SCE&G are constitutionally and statutorily sound. Response at 3. In short, ORS is required to offer testimony and admissible documents in its direct case filing that at least facially demonstrates that it can meet its burden of proof. It is not the Commission's duty to guess at whether there is in fact a "scintilla" of evidence justifying the extraordinary relief

[2] Again, no party of record filed any evidence in support of ORS's petition in this docket.

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that ORS has requested. Just like in any other case, the burden is squarely on ORS to prove its claims by submitting specific evidence into the record. It has flatly failed to do so, and as a result, there is no genuine issue as to any material fact and the case should be summarily dismissed.

Further, rather than asserting it has met its burden of proof by identifying specific facts, ORS now implores the Commission in this case to "wait and see" if the evidence that it offers at the hearing will support its claims. However, SCE&G—just like any other party in proceedings before this Commission—is entitled to know beforehand what evidence ORS will rely upon to make its case, not the least so that it can prepare its own case in response. This is of course the purpose of the requirement that parties "file copies of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing." 10 S.C. Code Ann. Regs. 103-845(C). Yet, in a most feeble attempt to be excused from its duty to provide evidence in its direct case, ORS now states that it intends "to incorporate by reference the [direct] testimony ORS submitted on September 25, 2017 [in Docket No. 2017-370-E] for all its witnesses…." But ORS cannot "lie in the weeds" in its direct case and then seek to cure through rebuttal testimony its failure to comply with its obligations to present sufficient evidence in its case in chief to satisfy its burden of proof in this docket. ORS, having virtually admitted through its "wait and see" argument that it failed to meet its burden under these most basic evidentiary procedures, should have its claims dismissed for lack of providing the most basic of proof.[3] SCE&G can only surmise that ORS believed the issues that they really wanted to have addressed could be addressed in Docket No. 2017-370-E and gave their duty in this docket short shrift. That strategy is fatally

[3] ORS also argues that summary judgment is premature because discovery in this case is left to be completed, and "there is a clear likelihood that further discovery and additional time to review discovery already conducted will uncover additional relevant evidence." Response at 3. Tellingly, ORS does not identify what this "additional relevant evidence" might be, nor does it identify which of the issues in S.C. Code § 58-27-920 are likely to be illuminated by this additional evidence. Again, having made no attempt whatsoever to support its claims in its prefiled testimony, ORS's assertion that further discovery will save its lack of evidentiary support is plainly untenable.

flawed and simply means that dismissal of its claim in this docket should be immediately ordered.

CONCLUSION

For the reasons stated above and in its Motion for Summary Judgment, SCE&G respectfully requests that the Commission grant summary judgment to SCE&G or, in the alternative, that the Commission strike the testimony and exhibits of ORS Witnesses Warner and James. SCE&G further requests that the Commission grant such other and further relief as is just and proper.

Respectfully submitted,

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